



# CIVIL COMMITMENT CRITERIA

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# History

- Virginia and other states began tightening commitment criteria in late 1960s and early 1970s as result of
  - Civil rights movement protecting disenfranchised groups, including those with mental illness
  - New constitutional challenges emphasizing treatment and rehabilitation in least restrictive setting



# History

- By 1980s, treatment providers and some advocacy groups began advocating for more therapeutic approaches
- By 2008, Virginia was one of only 5 states requiring finding of “imminent danger” to commit an individual



# Current Criteria

- The person presents an imminent danger to himself or others as a result of mental illness or
- Has been proven to be so seriously mentally ill as to be substantially unable to care for himself



# Mental Health Law Reform Commission

- Civil Commitment Task Force found “imminent danger” criteria subject to varying interpretations throughout Commonwealth
  - Some judges equated “imminent danger” with “immediate danger”
  - Other judges: “imminent danger likely to occur within reasonably short period of time unless appropriate treatment provided”



# Mental Health Law Reform Commission

## ■ Problems with interpretation:

- ☐ Inconsistent application throughout state
- ☐ Prevents use of involuntary treatment until too late or nearly too late
- ☐ Channels individuals into jails and prisons where mental health issues are not adequately addressed



# Virginia Tech Review Panel Recommendation

- Criteria for involuntary commitment be modified:
  - To promote more consistent application of the standard and
  - To allow involuntary treatment in a broader range of cases involving severe mental illness



# New Commitment Criteria

## 1<sup>st</sup> prong - dangerousness

- “Imminent” Removed from Dangerous Criteria:

“the person has a mental illness and there is a substantial likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any”





# Substantial Likelihood

- “Substantial likelihood” replaces “imminent danger”
- But substantial likelihood is limited by “near future”
- And must be evidenced by a recent act or behavior or other relevant evidence
- i.e. future is tied to recent past



# Near Future

- 28 states have a temporal requirement
- 22 states have none
- Majority of nine use “near future”
- Case law interpreting “near future” based upon facts of each case
- Illinois interprets “near future” to be equivalent to “within a reasonable time.”
  - In re Betty Gregorovich, 89 Ill. App. 3d 528, 411 N.E.2d 981 (1980)



# Recent Behavior

- Recitation of past acts not sufficient in absence of prediction of future dangerousness
- 34 states require an act or some behavior to meet commitment criteria
- 8 states use Virginia's new standard
- “and other relevant information, if any” evidencing harm tied to recent behavior



# Commitment Criteria

## 2<sup>nd</sup> prong – lack of capacity

- Substantially Unable to Care for Self changed:

“the person has a mental illness and there is a substantial likelihood that, as a result of mental illness, the person will, in the near future, (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs”



# Lack of Capacity

- More specificity added
  - Substantial likelihood/Near future
  - Will suffer serious harm
  - Due to lack of capacity to protect himself from harm
    - Not limited to physical harm
    - Can encompass serious financial harm



# Lack of Capacity

- Due to lack of capacity to provide for his basic human needs
  - Not limited to food, clothing or shelter
  - Includes medically necessary treatment



# Jail Transfers

- Only the dangerous 1<sup>st</sup> prong of the new civil commitment criteria applies to involuntary admissions from jails under §§ 19.2-169.6, 19.2-176 and 19.2-177.1.
- The lack of capacity 2<sup>nd</sup> prong does not apply